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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SLEVEN LAMAR JENKINS,

Defendant and Appellant.

B304669

(Los Angeles County
Super. Ct. Nos.
BH012431, BA248481)

THE COURT:

In 2005, after being convicted of conspiracy to commit bank robbery (Pen. Code, §§ 182, subd. (a)(1), 211) and receiving stolen property (*id.*, § 496, subd. (a)), defendant and appellant Sleven Lamar Jenkins was sentenced to 31 years to life in state prison. We affirmed the judgment on direct appeal. (*People v. Jenkins* (Feb. 8, 2007, B183874) [nonpub. opn.].)

In December 2019, defendant filed a petition for writ of habeas corpus in the superior court in which he challenged the designation by the California Department of Corrections and

Rehabilitation (CDCR) of the full term for his primary offense for the purpose of Proposition 57 parole consideration.¹ He argued that he was a nonviolent third striker, the sentencing court had not imposed a determinate sentence, and CDCR was not authorized to define what constituted his primary offense. He contended that his case should be returned to the sentencing court to impose a determinate term that would qualify as the primary offense.

The superior court denied defendant's petition without prejudice. It reasoned that, first, Proposition 57 did not create a resentencing remedy. Second, CDCR used the high term of defendant's primary offense—conspiracy to commit bank robbery—to calculate defendant's early parole consideration date of June 2, 2008, and defendant's parole consultation was conducted on October 23, 2019. Even if CDCR had used the low term for defendant's primary offense, he would not have been considered for parole earlier.

Defendant filed a notice of appeal from the order denying his petition for writ of habeas corpus.

Counsel was appointed to represent defendant in connection with this appeal. After reviewing the record, counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, in which no arguable issues were raised. On July 14, 2020, we informed defendant that he had 30 days within

¹ In 2016, California voters approved Proposition 57, which added a provision to the state Constitution that “[a]ny person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.” (Cal. Const., art. I, § 32, subd. (a)(1); see also *In re Edwards* (2018) 26 Cal.App.5th 1181, 1184–1186.)

which to personally submit any grounds of appeal, contentions, or argument for us to consider. Defendant filed a supplemental brief on July 28, 2020.

“[I]n noncapital cases, if the superior court denies a petition for a writ of habeas corpus, the petitioner has no statutory right to appeal. Instead, the petitioner must file a new, original petition, generally in the Court of Appeal.” (*Robinson v. Lewis* (2020) 9 Cal.5th 883, 895.) Because the order denying defendant’s petition for writ of habeas corpus is nonappealable, we dismiss his appeal of it.² (*People v. Fuimaono* (2019) 32 Cal.App.5th 132, 133–134; *People v. Mendez* (2012) 209 Cal.App.4th 32, 34.)

The appeal is dismissed.

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ASHMANN-GERST, Acting P. J. CHAVEZ, J. HOFFSTADT, J.

² Some courts have treated an appeal from the denial of a petition for writ of habeas corpus as the filing of a new petition in the Court of Appeal. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 986; *People v. Garrett* (1998) 67 Cal.App.4th 1419, 1423.) We have no cause to do so here because, during the pendency of this appeal, defendant filed a petition for writ of habeas corpus in this court regarding the same issues raised in this appeal. We summarily denied defendant’s petition. (*In re Jenkins* (Apr. 16, 2020, B304198).)